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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,001	09/08/2003	Michael T. Laurenzana	TKG4188	1728

34356 7590 03/09/2004

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EXAMINER
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ESTREMSKY, GARY WAYNE

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/657,001	Applicant(s) LAURENZANA, MICHAEL T.	
	Examiner Gary W Estremsky	Art Unit 3677	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/2003</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-10, 13-15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,522,048 to Davis.

Davis '048 teaches Applicant's claim limitations including : an "elongated reinforcement plate" - part 46 as shown in Fig 3, a "receiving plate" - part 12 as shown in Fig1,2, a "barrel portion" - 40. While the claim contains extensive functional language as regards intended use of the claim elements with unclaimed structures such as a 'dead bolt', plurality of fasteners', 'wall stud', that functional language does not further define any particular structure of the claimed elements that is not taught by the prior art. The claimed product is defined by its structure and the functional limitations are in effect broad and have not patentably defined from structures long known in the art. See MPEP 2114. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Though the structure of Davis '048 explicitly disclose the device to be *intended to be used* in the same way; due to similarity in its

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actual structure; much like the claimed invention, it is inherently capable of such use and arrangement with a deadbolt and wall stud. The law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6, 11, 12, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,522,048 to Davis.

Although Davis '048 does not explicitly disclose the parts are "formed from steel", it would have been an obvious design choice or engineering expedient for one of

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ordinary skill in the art to make the barrel and plate from steel where the examiner takes Official Notice that use of steel is well known in the art, and the use of steel would not otherwise affect the function of the device whereby one of ordinary skill in the art would have more than a reasonable expectation of success. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,612,629 to O'Hanlon in view of U.S. Pat. No. 6,651,390 to Camperelli, and further in view of U.S. Pat. No. 5,344,198 to Elliot.

O'Hanlon '629 teaches a "receiving plate" – 6, "substantially cylindrical aperture" – the bolt-receiving hole as shown in Fig 3 Limitation of "cylindrical aperture" is not so specific as to exclude hole shapes other than a 'circle' in view of definition of "**cylinder**" – 1. a. A surface generated by a straight line moving parallel to a fixed straight line and intersecting a plane curve. b. The part of such surface bounded by two parallel planes and the regions of the planes bounded by the surface. 2. A cylindrical container or object.". Rectangular and/or generally rounded prismatic shapes are commonly referred to as "cylindrical".. the reference also teaches a "plurality of holes for receiving a plurality of fasteners" – as shown.

While the reference discloses a portion behind the plate for receiving a bolt and that portion having a hole for receiving an additional screw, the reference does not fairly teach "barrel portion. However, Camperelli '390 discloses a strike arrangement in Fig 3

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having a plate 201 with cylindrical (circular) aperture and integral barrel portion (204) also having an additional hole at 209 for receiving an additional screw. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the striker ("receiver plate") of O'Hanlon '629 with circular aperture and integral barrel portion as taught by Camperelli '390 in order to closely receive a circular bolt. See col 5; lines 14-49 wherein is disclosed motivation for providing the proposed modification and expected benefits.

Regardless, the O'Hanlon '390, as modified, does not fairly teach an "elongated reinforcement plate" as claimed. However, Elliot '198 discloses that it is well known in the art of latches to provide a door jamb striker arrangement with a reinforcement plate (60) having all limitations. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the strike plate of O'Hanlon '629, as modified, with a reinforcing plate as taught by Elliot '198 for strengthening a door frame to which the striker plate may be attached in use. One of ordinary skill in the art would have more than a reasonable expectation of success since the reinforcement plate of Elliot '198 is not directly attached to the striker plate (see face of patent) with which it is intended to be used; much like the present invention.

As regards claims 5, 6, 11, 12, 16, and 17 although O'Hanlon '629, as relied upon, does not explicitly disclose the parts are "formed from steel", it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art to make the barrel and plate from steel where the examiner takes Official Notice that use of steel is well known in the art, and the use of steel would not otherwise affect the

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function of the device whereby one of ordinary skill in the art would have more than a reasonable expectation of success.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 587,131 to Markert.

U.S. Pat. No. 2,255,860 to Riedel.

U.S. Pat. No. 2,274,241 to Fendring.

U.S. Pat. No. 3,107,934 to Lee.

U.S. Pat. No. 3,152,825 to Schlage.

U.S. Pat. No. 4,211,442 to Hansen.

U.S. Pat. No. 4,458,931 to McBurnie.

U.S. Pat. No. 4,550,939 to Babb.

U.S. Pat. No. 4,832,386 to Sweet.

U.S. Pat. No. 5,640,808 to Simeone.

U.S. Pat. No. 5,769,473 to Sovis.

German Pat. Document No. 32 02 253 A1 to Rohrbacher.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary W Estremsky  
Examiner  
Art Unit 3677